

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NICHOLAS KYLE MARTINO,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

HONORABLE NOEL L. HILLMAN

Civil Action
No. 21-0037 (NLH)

NOTICE AND ORDER

To: Nicholas Kyle Martino
106 B Hurffville-Grenloch Road
Sewell, NJ 08080

You have filed a pro se pleading challenging your federal conviction and sentence under 28 U.S.C. § 2255. The Court must advise you regarding your rights under United States v. Miller, 197 F.3d 644 (3d Cir. 1999). Under federal law, a person seeking relief in federal court from confinement resulting from conviction in that court must include in a single petition, under § 2255, all potential claims for which he or she desires to seek review and relief,¹ because a second or successive habeas petition under § 2255 which seeks to raise new grounds must be dismissed unless certain very specific and rare circumstances exist, see 28 U.S.C. § 2244. Therefore, please note that:

1. You may have your pleading ruled upon as filed; or
2. You may withdraw your pleading and file an all-inclusive section 2255 petition including any and all potential claims, subject to the one (1) year period described by the Antiterrorism Effective Death Penalty Act in 28 U.S.C. § 2255.

You have forty-five (45) days from entry of this Notice and Order to advise the Court of your decision. If you fail to so advise, your pleading and motion will be ruled upon as filed.

¹ Petitioner's prior response to the Court indicates that he is aware that he "understands this Petition must include all grounds for relief known to Movant" ECF No. 4 at 1-2. The prohibition on second or successive § 2255 motions applies to more than just the claims that are currently "known" to Petitioner. A second or successive § 2255 motion will be dismissed unless it has been certified by the Third Circuit. 28 U.S.C. §§ 2244, 2255(h).

IT IS this 19th day of January, 2021

ORDERED that the Clerk shall reopen this matter; and it is further

ORDERED that Petitioner shall advise the Court within 45 days of the entry of this Order as to how he would like to proceed; and it is further

ORDERED that if Petitioner does not respond within the timeframe set forth by the Court, the motion will be ruled upon as filed; and it is finally

ORDERED that the Clerk of the Court shall send a copy of this Order to Petitioner by regular mail.

s/ Noel L. Hillman
NOEL L. HILLMAN
U.S. District Judge